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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 JANESEA CERVANTES,

8 Plaintiff,

9 v.

10 UNITED STATES OF AMERICA,

11 Defendant.

NO: 2:18-CV-3198-TOR

ORDER GRANTING UNITED
STATES OF AMERICA'S MOTION
FOR SUMMARY JUDGMENT

12 BEFORE THE COURT is Defendant United States of America's Motion for
13 Summary Judgment (ECF No. 17). The Motion was submitted without a request
14 for oral argument. Plaintiff Janessa Cervantes has not submitted a Response and
15 the deadline for doing so has passed. Defendant filed a Reply on January 14, 2020.
16 The Court has reviewed the file and submitted briefing and is fully informed. For
17 the reasons discussed below, the Motion (ECF No. 17) is **granted**.

18 **STANDARD OF REVIEW**

19 A movant is entitled to summary judgment if "there is no genuine dispute as
20 to any material fact and that the movant is entitled to judgment as a matter of law."

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1 Fed. R. Civ. P. 56(a). A fact is “material” if it might affect the outcome of the suit
2 under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
3 (1986). An issue is “genuine” where the evidence is such that a reasonable jury
4 could find in favor of the non-moving party. *Id.* The moving party bears the
5 “burden of establishing the nonexistence of a ‘genuine issue.’” *Celotex Corp. v.*
6 *Catrett*, 477 U.S. 317, 330 (1986). “This burden has two distinct components: an
7 initial burden of production, which shifts to the nonmoving party if satisfied by the
8 moving party; and an ultimate burden of persuasion, which always remains on the
9 moving party.” *Id.*

10 Only admissible evidence may be considered. *Orr v. Bank of America, NT*
11 *& SA*, 285 F.3d 764 (9th Cir. 2002). The nonmoving party may not defeat a
12 properly supported motion with mere allegations or denials in the pleadings.
13 *Liberty Lobby*, 477 U.S. at 248. The “evidence of the non-movant is to be
14 believed, and all justifiable inferences are to be drawn in [the non-movant’s]
15 favor.” *Id.* at 255. However, the “mere existence of a scintilla of evidence” will
16 not defeat summary judgment. *Id.* at 252.

17 DISCUSSION

18 Plaintiff alleges she incurred an injury in a car accident caused by Ms. Mary
19 Mach, an employee of the United States Postal Service. See ECF No. 17 at 1-2. In
20 short, according to Plaintiff, Ms. Mach rear-ended the vehicle in front of her

1 (driven by Kimberly A. Karnes) and, as a result, Ms. Karne's vehicle then collided
2 with Plaintiff's vehicle, causing damage to Plaintiff and her vehicle. See ECF No.
3 17 at 1-2. Plaintiff alleges Ms. Mach was working in her role as a postal delivery
4 worker at the time of the accident and that the Defendant the United States of
5 America is responsible as Ms. Mach's employer under the Federal Tort Claims
6 Act. See ECF No. 17 at 1.

7 Defendant has moved for summary judgment and, among other things,
8 contends that there is no evidence that Ms. Karne's vehicle made contact with
9 Plaintiff's vehicle during the incident. In support, Defendant points to the
10 deposition of Ms. Karnes, who testified that she did not believe she rear-ended
11 Plaintiff and the declaration of Ms. Mach, who stated that she could not see or hear
12 Ms. Karnes' vehicle impact with Plaintiff's. ECF No. 17 at 9. Plaintiff has not
13 filed a Response to aver or present evidence to the contrary. Clearly, without
14 evidence of a collision, Plaintiff has no claim as she has failed to prove three
15 elements of her negligence cause of action. As such, the Court finds the Defendant
16 has demonstrated it is entitled to summary judgment as a matter of law.

17 Plaintiff's failure to dispute the facts set forth by the United States allows the
18 Court to consider these facts admitted. Fed. R. Civ. P. 56(e)(2); LCivR 56(e). In
19 resolving this motion, the Court may consider other admissible materials in the
20 record. Fed. R. Civ. P. 56(c)(3). The Court has considered the sworn Complaint,

1 ECF No. 1, but it also does not directly address or counter the issues raised by the
2 United States.

3 The Court observes that Plaintiff has not responded to requests for
4 admission, did not appear for her deposition, nor has she complied with the Court's
5 Scheduling Order requiring Witness and Exhibit lists be filed by January 21, 2020.
6 For all intents and purposes, Plaintiff appears to have abandoned her claim.

7 **ACCORDINGLY, IT IS HEREBY ORDERED:**

8 Defendant United States of America's Motion for Summary Judgment (ECF
9 No. 17) is **GRANTED**. Plaintiff's claim is **dismissed with prejudice**.

10 The District Court Executive is hereby directed to enter this Order, enter
11 judgment for Defendant, furnish copies to counsel and Plaintiff, and **CLOSE** the
12 file.

13 DATED January 28, 2020.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
Chief United States District Judge